

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

IN RE:)
)
ROBBIE YVONNE MCCOY,) CASE NO. 06-60315 JPK
) Chapter 7
Debtor.)

ORDER REGARDING MOTION TO RECONSIDER ORDER
DENYING APPLICATION TO PAY FILING FEE IN INSTALLMENTS
["DEBTOR'S MOTION"]

On March 8, 2006, the Court entered an order denying the application filed by the debtor on March 2, 2006 to authorize the debtor to pay the filing fee for this case in installments. On March 16, 2006, the debtor, by counsel, filed the Debtor's Motion.

The substance of the Debtor's Motion is that the Court has construed a provision in the Fifth Amended Order Authorizing Electronic Case Filing in a manner which is inconsistent with the Indiana Rules of Professional Conduct applicable to counsel for the debtor. The Debtor's Motion then cites Fed.R.Bankr.P. 1006 for her contention that the Court can authorize the payment of filing fees in installments.

Fed.R.Bankr.P. 1006(b)(2) does allow the Court discretion to determine whether or not an application to pay filing fees in installments should be granted. This judicial officer has determined that he will not authorize the payment of filing fees in installments in a case in which the debtor is represented by an attorney, because the attorney has control over whether he/she will accept a case in which at least the filing fee must be provided to him/her before the case is filed. When an application to pay filing fees in installments is approved by the Court, the obligation to pay those filing fees becomes a debt to the United States, enforceable by the United States of America in the manner in which any other debt to the government is enforceable. The United States Courts have a potentially limited ability to pursue collection remedies with respect to debts for filing fees: there is no Memorandum of Understanding

between the United States Department of Justice and the Administrative Office of the United States Courts – in contrast to the arrangements between Executive agencies of the United States Government and the United States Department of Justice – which provides for the United States Department of Justice to pursue collection of debts owed to the United States Courts. This judicial officer has determined that the appropriate discretion to exercise in order to avoid creating debts to the United States with respect to which there is no certain collection mechanism, is to exercise the discretion provided by Fed.R.Bankr.P. 1006(b)(2) by denying any application for the payment of filing fees in installments in a circumstance in which the debtor is represented by an attorney. This judicial officer is aware of both Fed.R.Bankr.P. 1006(b)(2) and of the provisions of the Fifth Amended Order Authorizing Electronic Case Filing, and deems its determination to be consistent with both the Rule and the Order.

In response to the contention that the Court's determination causes counsel to violate Rule 1.8 of the Indiana Rules of Professional Conduct, counsel is decidedly wrong. The filter mechanism for whether or not fees required to be paid to the United States of America for filing of a bankruptcy case will be paid when due is the attorney who undertakes the filing of a bankruptcy case. If that attorney seeks to act in accordance with Rule 1.8, that attorney should advise his/her client that in order for him/her to file a case, the client must provide the attorney with the required filing fee in advance of the filing of the case. If the client is unable to do that, then the choice for the conscientious attorney who seeks to comply with Rule 1.8 is to decline to represent the client.

If debtor's counsel doesn't understand the foregoing reasoning, then debtor's counsel has simply not been faced with the voluminous number of defaulted installment payment orders which this Court experienced.

The Court also takes judicial notice of its record, which establishes that the filing fee was paid in full on March 15, 2006, one day earlier than the filing of the Debtor's Motion. Either

debtor's counsel overcame his ethical problems, or he in fact obtained the full amount of the filing fee from his client. The Debtor's Motion was therefore moot before it was filed.

IT IS ORDERED that the Debtor's Motion is DENIED.

Dated at Hammond, Indiana on March 30, 2006.

/s/ J. Philip Klingeberger
J. Philip Klingeberger, Judge
United States Bankruptcy Court

Distribution:
Debtor, Attorney for Debtor
Trustee, US Trustee